

COMPLIANCE BOARD OPINION NO. 01-1
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January 2, 2001

Mr. Don Coffin
VOICE

The Open Meetings Compliance Board has considered your complaint that the meeting practices of the Wicomico County Council did not comply with the Open Meetings Act. For the reasons stated below, the Compliance Board concludes that, in most respects, there was no violation. With regard to certain meetings with the Board of Education for Wicomico County, we are unable to state an opinion.

I

Complaint and Response

The gist of your complaint about the meeting practices of the County Council is as follows:

It has been a matter of routine that our County Council has met in Work Sessions and meetings with other governing bodies. These sessions and meetings included the discussion of budgetary and financial matters impacting the citizens of Wicomico County. No public announcement was made, nor were any minutes or record of said meetings taken. Since the public was not given the opportunity to attend or participate, the County Council's actions have violated the right of the people to hear and see their business being discussed in an open public forum and arena.

An appendix to your complaint identified 13 "Budget Work Sessions"(on April, 4, 6, 17, 18, 19, 24, 25, and 26 and May 1, 8, 9, 11 and 23, 2000) alleged to have been closed to the public; four sessions (on February 1, March 7, June 20, and July 5) identified as "Board of Education Breakfast Meetings," alleged to have been unannounced and closed to the public; and three "Council Work Sessions" (on July 11, August 8, and August 22), also alleged to have been closed to the public.

In a timely response on behalf of the Wicomico County Council, County Attorney Edgar A. Baker, Jr., denied that the Act had been violated. With respect to the “Budget Work Sessions,” the response described them as “Council budget work sessions during which the Council attempts to formulate and expense budget based on consultation with department heads. These sessions were previously addressed by the Open Meetings Compliance Board and found to comply with the Open Meetings Act (Compliance Board Opinion No. 97-16).” With respect to the “Board of Education Breakfast Meetings,” the response described them as an opportunity for the Board of Education “to meet with the County Council to discuss various aspects of the operations of the Board of Education.... As the Council is merely updated on the status of the Board’s operations, they are not engaged in advisory, judicial, legislative, quasi-judicial, or quasi-legislative functions. They are, in fact, carrying out an executive function by overseeing, to the extent permissible, operations of the department which receives County funding.” Finally, with respect to the “Council Work Sessions,” the response likewise described these as an executive function – namely, a meeting with “various department heads to obtain briefings on the status of ongoing projects.... As the executive body, the County Council is entitled to meet with staff to obtain such briefings, and those meetings are not subject to the Open Meetings Act requirements.” The response also noted that “the Council, in an effort to be accessible and open to the public, voted to open even these briefings to the public, and the meeting on August 22, was in fact, open to the public.”

II

Analysis

A. Budget Work Sessions

As the County Council’s response correctly observed, the kind of budget preparation work sessions covered by your complaint were addressed in a prior opinion. *See* Compliance Board Opinion 97-16 (December 2, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 261. In that opinion, we pointed out that, under the governmental structure in Wicomico County, the County Council carries out an executive function when it is involved with department heads in the formulation of the budget. As an executive function, meetings that are part of the budget formulation process are excluded from the Open Meetings Act. §10-503(a)(1)(i) of the State Government Article, Maryland Code. Therefore, the closed meetings on this topic did not violate the Act.

B. Board of Education Breakfast Meetings

Under State law, the Wicomico County Council has the responsibility to provide funding for the Wicomico County School System. *See* §§5-102(b) and 5-103(a) of the Education Article, Maryland Code. The County Council, however, does not have policy-setting or administrative responsibility for the school system. The laws governing the school system are to be administered by the Board of Education, not the County Council. *See* Title 4 of the Education Article. Therefore, we have difficulty accepting that the County Council ordinarily exercises any executive function over the school system.

Perhaps it could be said that the County Council is administering the law requiring it to appropriate funds annually for the school system, for it has an understandable interest in seeing to it that these funds are well-spent. Nevertheless, the highly general response of the County Council – that the meetings with the Board of Education are held “to discuss various aspects of the operations of the Board of Education” – does not afford us sufficient information to determine whether these meetings constitute any kind of executive function for the County Council, which would be excluded from the Act, or whether they fall within none of the defined functions in the Act, which would result in the Act’s application to these meetings. “If a discussion fits within none of the functional definitions of the Act, then the discussion is subject to the Act.” Compliance Board Opinion 94-7, at 3 (August 16, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 96, 98. We are unable to express an opinion on this aspect of your complaint.

C. Council Work Sessions

Because the Wicomico County Council serves as the executive head of county government, its meetings with department heads concerning the implementation of ongoing projects would typically involve an executive function excluded from the Act. Compliance Board Opinion 97-16 (December 2, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 261; Compliance Board Opinion 93-10 (October 15, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 50. The closed meetings of this nature identified in your complaint did not violate the Act. The Compliance Board commends the County Council, however, for furthering the goals of the Act through its decision to open these work sessions to public observation.

III

Conclusion

In summary, the Open Meetings Compliance Board finds that the Wicomico County Council did not violate the Open Meetings Act by conducting closed budget work sessions and work sessions with department heads. The Compliance Board expresses no opinion about the breakfast meetings between the Board of Education and the County Council.

OPEN MEETINGS COMPLIANCE BOARD

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